## OFFICIAL ASSIGNEE v. CHARTERED INDUSTRIES OF SINGAPORE LTD.

**[O.C.J. (Chua J.) April 14, 1978]**

**[Singapore — Originating Motion No. 59 of 1977]**

*Arbitration — Dispute referred to arbitration — Misconduct — Failure to decide all matters referred to arbitrator — Arbitrator's award set aside.*

In this case contractors (who later became bankrupt) had contracted to construct a building for the respondents. The building contract provided that if the contractors failed to proceed with the works with reasonable diligence the respondents could terminate the contract. The respondents purported to terminate the contract but the contractors disputed the validity of the termination. The parties agreed to submit their dispute to arbitration and appointed one Albert Hung Hin Kay as arbitrator. The contractors claimed that the agreement was wrongfully terminated and claimed damages in the sum of $415,567.44 while the respondents claimed that it was lawfully terminated and counterclaimed for the sum of $154,431.49. The arbitrator after hearing the parties made an award that the respondents had a valid and just claim for $154,431.49 and that the contractors did not have a valid and just claim for "$415,567.44 or any sum at all." The official assignee applied to have the arbitration set aside or to have the matter referred back to the arbitrator.

**Held:** (1) in this case the arbitrator had failed to decide on all matters or issues referred to him and in particular he had failed to decide the very questions submitted to him whether or not the notice of termination and the termination of the agreement was good or bad;

(2) the award to the effect that the contractors did not have a just and valid claims against the defendants "to the extent of $415,567.44 or at all" was ambiguous, as it might mean that the contractors had proved that the notice was unlawful and void but had failed to prove the damages claimed by them or that the contractors had failed to prove both the cause of action and damages claimed;

(3) the award was uncertain how it had decided the matters referred and was therefore invalid and must be set aside.

*Case referred to:-*

(1) *Mortin* v. *Burge* 111 E.R. 1049.

ORIGINATING MOTION.

*David Fang* for the applicants.

*T.T. Durai* for the respondents.

**Chua J.:** The plaintiff in this case is the Official Assignee of the property of Cecil Loke Yue Hung and Bobby Wang Chun Pong, bankrupts. The two bankrupts were partners of a building construction firm trading under the style of "Goodwin Construction Company" (hereinafter referred to as "GCC").

On August 25, 1969, GCC commenced construction of Phase I of a building project at Jalan Boon Lay for the defendants, Chartered Industries of Singapore Ltd. (hereinafter referred to as "CIS").

On October 21, 1969, GCC was ordered by CIS to stop building works temporarily because the piling works for Phase I carried out by the piling contractor had failed and re-piling had to be carried out.

On October 29, 1969, an agreement was signed between CIS and GCC for the construction of Phase I of this building project for a sum of $898,159.60. The works consisted of a factory and certain related works and there was an agreed time schedule. Also forming part of the agreement was a set of conditions known as P.W.D. conditions.

Clause 33 of the P.W.D. conditions reads: —

"33. (a) Default. — If the Contractor shall make default in any of the following respects, namely:

(i) without reasonable cause wholly suspends the Works before completion;

(ii) fails to proceed with the Works with reasonable diligence;

(iii) refuses or to a substantial degree persistently neglects after notice in writing from the Superintending Officer to remove defective work or improper materials,

then, if any such default shall continue for seven days after a notice sent by registered post to the Contractor from the Superintending Officer specifying the same, the Superintending Officer may (without prejudice to any other rights herein contained) thereupon by notice sent by registered post determine this Contract, provided that notice hereunder shall not be given unreasonably or vexatiously and such notice shall be void if Government is at the time of the notice in breach of this Contract."

According to the Definition Clause of the P.W.D. conditions the term "The Superintending Officer (or the initial S.C.) shall mean the officer so designated and his successor in office and also such person or persons as may be deputed by him in writing to act on his behalf for the purpose of the contract."

Late in March 1970, possession of the work site was handed back to GCC, after the completion of the re-piling work.

By letter dated April 16, 1970, CIS informed GCC that GCC had "failed to proceed with the works with reasonable diligence" and warned them that the agreement would be terminated should there be no improvement within seven days of the aforesaid letter. The letter was signed by Michael Ting, Head of Colt Project.

By another letter dated April 30, 1970, CIS terminated the agreement under Clause 33 of the P.W.D. conditions. The letter was signed by Wong Kee Koon, General Manager.

GCC disputed the validity of the termination of the agreement and the parties agreed to submit their dispute for arbitration pursuant to Clause 39 of the P.W.D. conditions.

The parties appointed Mr. Albert Hong Hin Kay, an arbitrator. Statement of Claim by GCC, Defence and Counterclaim by CIS and Reply to Defence & Counterclaim by GCC were submitted to the arbitrator. GCC claimed that the agreement was wrongfully terminated and claimed damages in the sum of $415,567.44. CIS claimed that the agreement was lawfully terminated and counterclaimed the sum of $151,431.49.

The arbitration proceedings commenced on May 23, 1977, and concluded on May 25, 1977.

The arbitrator made and published his award on September 30, 1977. The award was as follows:

"I award and determine:

1. That the said Chartered Industries of Singapore Pte. Ltd. had a just and valid claim and demand against the said Goodwin Construction Co. to the extent of $151,439.49.

2. That the said Goodwin Construction Co. has not a just and valid claim against the said Chartered Industries of Singapore Pte. Ltd. to the extent of $415,567.44 or any sum at all.

3. The said Goodwin Construction Co. shall on the 10th day of October, 1977, pay the said sum of $151,439.49 unto the said Chartered Industries of Singapore Pte. Ltd. at his office at 9.30 a.m.

4. The said sum of $151,439.49 shall be paid accepted and taken as and for full satisfaction and discharge and as final end and determination of the said differences in the matters so referred as aforesaid and all demands upon or in respect of the same by either of the said parties against the other of them.

5. The said Goodwin Construction Co. shall bear and pay his own costs of and attending the said arbitration and shall pay to the said Chartered Industries of Singapore Pte. Ltd. his costs of and attending the said arbitration and shall pay the costs of this my award and which I tax and settle at the sum of $9,500. And I determine the costs of the said Chartered Industries of Singapore Pte. Ltd. to amount to $2,000.

The plaintiff now moves this court to set aside the award of the arbitrator, or in the alternative remit it to the arbitrator for reconsideration, on the grounds that the arbitrator misconducted himself.

The plaintiff says that the arbitrator misconducted himself in that, *inter alia,* he failed to decide on all matters or issues which were referred to him in the arbitration proceedings.

The authorities are clear that an award may be set aside if the arbitrator has misconducted himself. What constitutes misconduct is set out in *Halsbury's* Laws of England, 4th Ed., Volume 2 page 330 para. 622. Misconduct occurs if the arbitrator fails to decide all the matters which were referred to him.

The matters or issues which were raised before the arbitrator can be ascertained from the pleadings filed in the arbitration proceedings. In para. 9 of the Statement of Claim the issues raised were:

"(i) whether or not the purported notice of April 16, 1970, was unlawful and void since it was given by CIS and not by the Superintending Officer as required by Clause 33 of the P.W.D. conditions.

(ii) whether or not the termination of the Agreement on April 30, 1970, by CIS' letter was wrongful because first it had not been preceded by notice from the Superintending Officer as required by Clause 33, — and secondly the Agreement was terminated by CIS and not by the Superintending Officer as required by Clause 33, — thirdly at the time of the notice the CIS were in breach of the Agreement since they had not paid for the work performed by GCC within the time stipulated by the Agreement."

The Defence & Counterclaim raise the following issues:

"(i) whether or not CIS were justified to terminate the Agreement with GCC due to GCC's failure to proceed Work with reasonable diligence, which GCC denied in paragraph 2 of their Reply.

(ii) whether or not CIS were entitled to give notice themselves since there was no superintending officer nominated, as they maintained, which GCC join issue with them in para. 1 of the Reply."

It is obvious looking at the award that the arbitrator failed to decide on all the matters or issues referred to him. In particular he failed to decide the very questions submitted to him whether or not the notice of April 16 and the termination of the agreement on April 30, 1970, by CIS were unlawful and void as claimed by GCC. The arbitrator should have stated in his award whether the notice and the termination of the agreement were good or bad. The award is clearly defective and therefore void. I do not see any means of avoiding the consequence, which is, that the award must be set aside.

Being of this opinion it is unnecessary to consider the other points raised by the plaintiff. But I think the award is also defective, and therefore void, on account of the award being ambiguous.

GCC alleged that the notice of warning and the notice of termination of the agreement were unlawful and void and they claimed that as a result of the wrongful termination of the agreement they were entitled to damages in the sum of $415,567.44.

The award "That the said Goodwin Construction Co. has not a just and valid claim against the said Chartered Industries of Singapore Pte. Ltd. to the extent of $415,567.44 or any sum at all" is ambiguous as it is capable of two interpretations. First, that GCC had proved that the notice and termination were unlawful and void but had failed to prove the damages claimed by them; or secondly that GCC had failed to prove both the cause of action and damages claimed. The award is uncertain how it has decided the matters referred. It is therefore invalid and must be set aside. (*Mortin* v. *Burge,* 111 E.R. 1049).

In the result the award is set aside.

*Award set aside.*